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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,414	04/05/2001	Hans Josef Rinninger	31530-171041	5027
26694	7590	11/15/2005		
VENABLE LLP P.O. BOX 34385 WASHINGTON, DC 20045-9998			EXAMINER ADDIE, RAYMOND W	
			ART UNIT	PAPER NUMBER

3671

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/826,414

Applicant(s)

RINNINGER, HANS JOSEF

Examiner

Raymond W. Addie

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,12-14 and 16-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-8,12-14 and 16-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Double Patenting**

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller B. Eagle Mfg. Co.*, 151 U.S. 186 (1894), *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Fogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Claims 1, 5-8, 12, 14, 18-22 are rejected under 35 U.S.C. 101 as claiming the same invention as that of prior U.S. Patent No. D448,092 S. This is a double patenting rejection.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5-8, 12-15, 18-23 are rejected under 35 U.S.C. 103(a) as being

unpatentable over McClintock # 957,985 in view of Rinninger # 4,792,257.

McClintock discloses a concrete, cube-shaped paving stone (c) with sharp edged

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corners. Each face of said paving stone being planar such that the distances between the planar sides are equal and that each side of said paving stone can be used as the upper surface of the paving stone.

What McClintock does not disclose is a paving stone having a rounded portion.

However, Rinninger '257 teaches it is desirable to provide paving stones having planar sides, tops and bottoms; with clothodially-rounded portions (31) that extend over  $\frac{1}{4}$ - $\frac{1}{6}$ <sup>th</sup> of at least one face; in order to improve water "flow-off" from the top surface of the stone. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the cube shaped paving stone of McClintock, with at least one clothodially rounded edge, in order to improve water drainage of the pavement formed by the paving stones.

In regards to Claims 13, 23 McClintock specifically discloses the desirable advantages to randomly spreading, leveling and grading the paving stones, to provide an aesthetically pleasing appearance and a strong, flat wearing surface provided by the paving stones. Rinninger teaches it is desirable to provide cuboidal paving stones with clothodially rounded edges, to at least a few of the paving stone faces, to permit surface water drainage, which inherently increases the safety of the paved surface, during rainfall. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to form the paved surface of McClintock, such that the paving stones are arranged in a random order, which permits at least a few of the

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paving stones to form drainage passages, as taught by Rinninger in order to increase the safety of the roadway.

3. Claims 3, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClintock # 957,985 in view of Rinninger # 4,792,257 as applied to claims 1, 14 above, and further in view of Scheiwiller # 5,348,417.

McClintock in view of Rinninger disclose using plurality of differently sized paving stones, in order to form a composite paving surface, having a varied and non-monotonous appearance. What McClintock in view of Rinninger does not disclose is the specific combination of paving stones to include additional blocks that are twice the length and/or twice the width of the standard cuboid stone.

However, Scheiwiller discloses a set of paving stones (1, 7), comprising a 1<sup>st</sup> molded block (10) having a square cross section, in plan view, and a 2<sup>nd</sup> molded block (7) having an oblong/rectangular cross section in plan view; with a width and height of edge dimension L equal to that of the 1<sup>st</sup> molded block and a length of edge dimension 2L.

Said set of paving stones (1, 7) can be combined in various patterns to form an appealing surface. See col. 1, ln. 49-col. 2, ln. 31.

4. Claims 3, 4, 16, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClintock # 957,985 in view of Rinninger # 4,792,257 as applied to claims 1, 14 above, and further in view of Scheiwiller # 5,503,498.

McClintock in view of Rinninger disclose using plurality of differently sized paving

stones, in order to form a composite paving surface, having a varied and non-monotonous appearance. What McClintock in view of Rinninger does not disclose is the specific combination of paving stones to include additional stones having an oblong/rectangular cross section in plan view; with a width and height of edge dimension L equal to that of the 1<sup>st</sup> molded block and a length of edge dimension 2L; nor the use of additional blocks that are square in plan view and with dimensions of four cubes with the size of 4 cubes lying beside one another.

However, Scheiwiller discloses a set of paving stones (33, 34, 35), comprising a 1<sup>st</sup> molded block (1) having a square cross section, in plan view, and a 2<sup>nd</sup> molded block (34) having an oblong/rectangular cross section in plan view; with a width and height of edge dimension L equal to that of the 1<sup>st</sup> molded block and a length of edge dimension 2L and a 3<sup>rd</sup> paving stone (35) having the size of 4 standard stones (33) said set of paving stones (1, 7) can be combine in various patterns to form an appealing surface. See Fig. 8; col. 7, Ins. 14-23. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the paving stones of McClintock in view of Rinninger in a set of paving stones having a variety of sizes and shapes, as taught by Scheiwiller '498, in order to provide a paved surface having a varied appearance. See Scheiwiller '498 col. 2, Ins 62-68.

***Response to Arguments***

5. Applicant's arguments filed 9/9/05 have been fully considered but they are not persuasive.

Applicant argues against the double patenting rejection cited in the Last Office Action by stating "certain claim types, e.g. sets of paving stones...(claims 3, 4, 16, 17) and laid sets of paving stones...(claims 13 and 23) are not even depicted in the figures of the design patent".

However, Applicant is reminded the claims argued (3, 4, 13, 16, 17) are not Subject to the double patenting rejection of the Last Office Action.

Hence, the argument is moot.

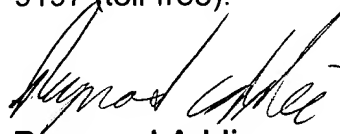
Applicant's arguments against the references to McClintock '985, Rinninger '257 and Scheiwiller '498 appear to be a restatement of previously made arguments, that were addressed in detail, in the Last Office Action.

Hence, Applicant's arguments are not persuasive and the rejections cited in the Last Office Action are maintained.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 571 272-6986. The examiner can normally be reached on 6AM-2:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Raymond Addie**  
**Patent Examiner**  
**Group 3600**

**11/12/05**